



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATERWAYS & WETLANDS PROGRAM

October 21, 2014

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Mr. Scott Gould, Esq.
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100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

RE: CFC Fulton Properties, LLC.
PAG-02-0029-14-002
Informal Hearing Determination

Dear Counsel:

On October 20, 2014, the Pennsylvania Department of Environmental Protection ("PADEP") held an informal hearing in accordance with 25 Pa. Code § 102.32(c). PADEP held this informal hearing in response to Lauren Williams' request, on behalf of her clients, for a hearing on Fulton County Conservation District's authorization for CFC Fulton Properties, LLC., ("CFC Fulton") to operate under a General NPDES Permit for Stormwater Discharges Associated with Construction Activities, permit No. PAG-02-0029-14-002 ("Permit").

During the informal hearing, PADEP accepted oral comments from Mr. Yeager on behalf of his clients and provided an opportunity for CRC Fulton to respond to those comments. PADEP also conducted its own review of the CFC Fulton application.

As a result of the hearing and PADEP's review, PADEP has determined that CFC Fulton is not authorized to operate under the Permit at this time. CFC Fulton's General NPDES permit notice of intent and associated reports and plans ("Application") contain numerous technical deficiencies. Those technical deficiencies are identified in the attached Memorandum.

The PADEP is providing CFC Fulton 60 days to provide a response to the technical deficiencies or an explanation of why the information in the Application is satisfactory.

If you have any questions regarding this determination, please contact Mr. Curtis Sullivan, PADEP Assistant Counsel, at 717.783.8790, or by email at curtsulliv@pa.gov.

Mr. Jordan Yeager, Esq.
Ms. Lauren M. Williams, Esq.
Mr. Scott Gould, Esq.

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October 21, 2014

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717.787.3483) FOR MORE INFORMATION

Sincerely,



Scott R. Williamson
Program Manager
Waterways & Wetlands Program

Enclosures

Cc: Curtis Sullivan, Esquire, PADEP Assistant Counsel
Fulton County Conservation District
Ayr Township

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Waterways & Wetlands Program
South-central Regional Office
717.705.4802

DATE: October 21, 2014

SUBJECT: Bivouac Swine Farm
CFC Fulton Properties, LLC
Technical Deficiencies
Permit No. PAG02002914002
Ayr Township, Fulton County

TO: Scott Williamson
Program Manager
Waterways & Wetlands Program

FROM: Nathan R. Crawford, P.E.
Permits Section Chief
Waterways & Wetlands Program

After reviewing the Post Construction Stormwater Management (PCSM) Report (last revised July 17, 2014), the PCSM Plan (last revised July 25, 2014) and the Pennsylvania Natural Diversity Inventory (PNDI) Search Receipt dated May 1, 2014 for the referenced NPDES Permit, I have identified the following technical deficiencies.

1. The PCSM Report did not provide discussion demonstrating that an increase in the rate of stormwater runoff was prevented to the extent practicable (see deficiencies related to increased runoff rate). [25 Pa. Code § 102.8(b)(2)] {This deficiency was also identified by Attorney Yeager during the informal hearing}
2. The PCSM Report did not provide discussion demonstrating that any increase in stormwater runoff was minimized to the extent practicable (see deficiencies related to increased runoff volume). [25 Pa. Code § 102.8(b)(3)] {This deficiency was also identified by Attorney Yeager during the informal hearing }
3. The PCSM Report did not provide discussion demonstrating that the impervious areas were minimized to the extent practicable. [25 Pa. Code § 102.8(b)(4)] {This deficiency was also identified by Attorney Yeager during the informal hearing }
4. The PCSM Report did not provide discussion demonstrating that the protection of existing drainage features and existing vegetation were maximized to the extent practicable. [25 Pa. Code § 102.8(b)(5)] {This deficiency was also identified by Attorney Yeager during the informal hearing }

5. The PCSM Report did not provide discussion demonstrating that the land clearing and grading was minimized to the extent practicable. [25 Pa. Code § 102.8(b)(6)] {This deficiency was also identified by Attorney Yeager during the informal hearing}
6. The PCSM Report did not provide discussion demonstrating that soil compaction was minimized to the extent practicable (see deficiency related to soil compaction). [25 Pa. Code § 102.8(b)(7)] {This deficiency was also identified by Attorney Yeager during the informal hearing }
7. There are many instances in the infiltration testing where there was no movement at time intervals or the end result was zero infiltration; however, these areas will be still designed and utilized as runoff volume and rate control PCSM Best Management Practices (BMPs). No discussion was provided as to how these areas will reduce the runoff volume and rate as designed, given the very little to no infiltration. [25 Pa. Code §§ 102.8(g)(2) & 102.8(g)(3)] {This deficiency was also identified by Attorney Yeager during the informal hearing}
8. Based upon the testing and plan information, the following technical deficiencies are related to the PCSM BMP and the limiting zone: [25 Pa. Code § 102.8(g)(1)] {This deficiency was also identified by Attorney Yeager during the informal hearing }
 - a. The bottom elevation of Bio-Retention Basin BB-1 is approximately 13 inches below the limiting zone of the regularly occurring seasonally high water table (mottles). A 2-ft. (24 inch) separation between the bottom of the basin and the limiting zone is required per Act 167 Model Ordinance Section 601.A.6 and recommended per Protocol 2.1.a in Appendix C of the Post Construction Stormwater Management Manual (PCSM Manual). No additional discussion was provided related to the separation between the bottom of the basin and the limiting and adequate sub-surface drainage was not provided.
 - b. The bottom elevation of Bio-Retention Basin BB-2 is approximately 17 inches below the limiting zone of the regularly occurring seasonally high water table (mottles). A 2-ft. (24 inch) separation between the bottom of the basin and the limiting zone is required per Act 167 Model Ordinance Section 601.A.6 and recommended per Protocol 2.1.a in Appendix C of the PCSM Manual. No additional discussion was provided related to the separation between the bottom of the basin and the limiting and adequate sub-surface drainage was not provided.
 - c. The bottom elevation of Rain Garden RG-3 has an approximate separation of 8 inches to the limiting zone of the regularly occurring seasonally high water table (mottles). A 2-ft. (24 inch) separation between the bottom of the basin and the limiting zone is required per Act 167 Model Ordinance Section 601.A.6 and recommended per Protocol 2.1.a in Appendix C of the PCSM Manual. No additional discussion was provided related to the separation between the bottom of the basin and the limiting and adequate sub-surface drainage was not provided.
 - d. Rain Garden RG-2 proposes up to a 7-ft (84 inches) and the test probe found a limiting zone at 49 inches. No investigation was performed for the soil in the area of the maximum cut for this PCSM BMP.

9. Evidence of a regularly occurring seasonally high water table was found at most of the areas tested for the PCSM BMPs, and the regularly occurring seasonally high water table was observed to be relatively close to the surface (ranging between 11 and 49 inches). The project proposes an approximate 30-ft cut to the east of the Gestation Barn. An assessment of the soil and geology could not be located for the deep cuts proposed across the project site. If groundwater is encountered as a result of the cut(s), the result would be a constant inflow into the PCSM BMPs and change their function from the design and could affect the water quality, runoff volume and runoff rate control. *[25 Pa. Code §§ 102.8(g)(1), 102.8(g)(2) & 102.8(g)(3)]* {This deficiency was also identified by Attorney Yeager during the informal hearing}
10. The proposed PCSM BMPs need to have additional information provided in the PCSM Plan related to the amended soils. The additional information shall include the identification of how often the material shall be tested to ensure it is meeting the compaction specification and that it is meeting the designed infiltration rate (ensure that the designed infiltration rate is identified for each PCSM BMP). The testing shall be identified as a critical stage of PCSM BMP installation. *[25 Pa. Code §§ 102.8(f)(6) & 102.8(f)(7)]* {This deficiency was also identified by Attorney Yeager during the informal hearing}
11. The project proposes to fill up to approximately 40-ft in some spots and no information could be located in the PCSM Report or Plan to limit the compaction of material or lessen the compaction of disturbed areas which will be restored. *[25 Pa. Code §§ 102.8(f)(3), 102.8(f)(6) & 102.8(f)(7)]* {This deficiency was also identified by Attorney Yeager during the informal hearing}
12. Loading ratio information for each PCSM BMP has not been provided. Ensure that the loading ratios are within the recommended values listed in Protocol 2.2.e in Appendix C of the PCSM Manual. If the loading ratios exceed the recommended values, then provide discussion which identifies how the loading ratios will manage stormwater during and after the completion of earth disturbance activities to achieve the regulatory standards in 25 Pa. Code § 102.11(a). *[25 Pa. Code §§ 102.8(f)(8), 102.8(f)(15), 102.11(a)(2) & 102.11(b)]* {This deficiency was also identified by Attorney Yeager during the informal hearing}
13. The PCSM Report does not identify the past land uses for the project site. Only the present and proposed land uses are addressed. *[25 Pa. Code § 102.8(f)(3)]*
14. The PCSM Report identifies that the National Wetland Inventory (NWI) was used to investigate wetlands at the site. While the NWI is a good search tool, it cannot be solely relied upon for presence/absence of wetlands at the site. *[25 Pa. Code § 102.8(f)(5)]*
15. The PCSM Report only identified floodplains and did not include discussion on floodways. The PCSM Plan did not identify the floodways. *[25 Pa. Code § 102.8(f)(5)]*
16. The soil limitations of piping and seepage were not identified in the PCSM Report, nor were any resolutions provided to address these limitations. *[25 Pa. Code §§ 102.8(f)(2) & 102.8(g)(5)]*

17. The PCSM Report does not properly identify the receiving surface waters, including the two (2) unnamed tributaries to Cove Creek. *[25 Pa. Code § 102.8(f)(5)]*
18. The PCSM Report identifies that the PCSM Plan was designed to meet the requirements in the approved Act 167 Plan for Fulton County (Page 8). The PCSM Report (Page 8) identifies that a Curve Number (CN) of 78 was utilized for woods in Hydrologic Soil Group (HSG) D; however, the Act 167 Plan requires that a CN of 77 be utilized for woods in HSG D. *[Act 167 Model Ordinance Section 602.E.2 and 25 Pa. Code §§ 102.8(g)(2), 102.8(g)(3) & 102.8(g)(4)]*
19. The Operation & Maintenance (O&M) Notes in the PCSM Report (Page 18 and on the PCSM Plan Sheet C8) are not sufficient. The O&M Notes shall include how the PCSM BMPs are to be accessed and shall include repair and replacement. Refer to Chapter 6 of the PCSM Manual for guidance on O&M. *[25 Pa. Code §§ 102.8(f)(10) & 102.11(a)(2)]*
20. The Sequence of BMPs in the PCSM Report (Page 18 and on the PCSM Plan Sheet C8) are not sufficient. The sequence shall be a sequence of PCSM BMP implementation or installation in relation to earth disturbance activities of the project site. *[25 Pa. Code § 102.8(f)(7)]*
21. The Recycling of Materials in the PCSM Report (Page 19 and on the PCSM Plan Sheet C10) is not sufficient. Procedures which ensure that the proper measures for recycling and disposal of materials associated with or from the PCSM BMPs shall be provided. *[25 Pa. Code § 102.8(f)(11)]*
22. The PCSM Plan Preparer Experience on Page 20 of the PCSM Report does not adequately demonstrate that the person who prepared the PCSM Plan has been trained and has experience in design methods and techniques applicable to the size and scope of the project being designed. *[25 Pa. Code § 102.8(e)]*
23. The Time of Concentration (T_c) calculations utilized sheet flow lengths of 150-ft.; however, the Act 167 Plan limits the maximum sheet flow length to 100-ft. Ensure that all calculations are revised accordingly. *[Act 167 Model Ordinance Section 602.G.1 and 25 Pa. Code §§ 102.8(g)(3) & 102.8(g)(4)]*
24. The 24-hour rainfall depths utilized in the calculations appear to be consistent with the NOAA Atlas 14, with the exception of the 1-, 10- & 100-year storm events. The utilized rainfall depths for the 1-, 10- & 100-year storm events are 2.40, 4.60 & 6.20 inches, respectively. NOAA Atlas 14 identifies those rainfall depths as 2.35, 4.07 & 6.37 inches, respectively. Ensure that all calculations are revised accordingly. *[Act 167 Model Ordinance Section 602.C.2 and 25 Pa. Code §§ 102.8(g)(2), 102.8(g)(3) & 102.8(g)(4)]*
25. The post-development contributory drainage areas for Drainage Areas BB-1, BB-2 & BP-1 exceed the “industry standard” for being able to assume a minimum T_c of 5 minutes. *[25 Pa. Code §§ 102.8(g)(3) & 102.8(g)(4)]*

26. The post-development Drainage Area Bypass DA-2 has a higher Tc than the pre-development Drainage Area Pre DA-2. However, the flow path utilized for the post-development Tc is unchanged from the pre-development conditions. Therefore, the pre-development Drainage Area Pre DA-2 shall utilize the same Tc as the post-development Drainage Area Bypass DA-2. *[Act 167 Model Ordinance Section 602.G.3.b and 25 Pa. Code §§ 102.8(g)(3) & 102.8(g)(4)]*
27. The provided Drainage Maps (Sheets D1 & D2) are not of sufficient detail to verify the drainage areas or the Tc flow paths. Ensure that proper grading information is provided on the PCSM Plan to show consistency with the delineated drainage areas. *[25 Pa. Code §§ 102.8(f)(3) & 102.8(f)(15)]*
28. The calculations show an increase in runoff rate for all storm events (1-, 2-, 10-, 25-, 50- & 100-year) for Drainage Area DA-3 and an increase in the runoff rate for the 1-year storm event for Drainage Area DA-5. No discussion was provided to demonstrate that the increases in runoff rates will either be more protective than meeting the pre-development runoff rates or that the existing water quality and existing and designated uses of the receiving surface waters will be maintained. *[Act 167 Model Ordinance Section 304.B and 25 Pa. Code § 102.8(g)(3)]*
29. The routing calculations for RG-3 utilize an exfiltration rate of 0.5 in/hr.; however, the infiltration testing for P5 yielded results of zero and 0.25 in/hr. No explanation of why an increase in infiltration was utilized for the design. *[25 Pa. Code §§ 102.8(g)(3) & 102.8(g)(4)]*
30. The PCSM Manual recommends applying a Safety Factor to tested infiltration rates for design purposes. It did not appear that a Safety Factor was utilized, and no information could be located that addressed why a Safety Factor was not utilized. *[25 Pa. Code §§ 102.8(g)(3), 102.8(g)(4), 102.11(a)(2) & 102.11(b)]*
31. The hydrograph combinations were not provided. If the hydrographs were not combined to determine the total flow for a drainage area, identify how that was determined. *[25 Pa. Code §§ 102.8(g)(3) & 102.8(g)(4)]*
32. PCSM Standard Worksheets 1, 2 & 3 were not provided. *[25 Pa. Code § 102.8(g)(2)]*
33. PCSM Standard Worksheet 4 was not utilized correctly. Worksheet 4 shall analyze the entire disturbed area for each separate point of interest (point of interest is the point where discharge from the site enters the receiving surface water). Worksheet 4 shall also account for shifts in the drainage areas between pre- and post-development conditions. *[25 Pa. Code §§ 102.8(g)(2) & 102.8(g)(4)]*
34. Calculations were not provided demonstrating how the volume reduction claimed on PCSM Standard Worksheet 5 was obtained for the PCSM BMPs. Also, Worksheet 4 for RG-1 identifies that 17,590 cf of runoff flows into the BMP; however, Worksheet 5 claims a volume reduction of 23,661 cf. How can RG-1 reduce more volume than what is generated into the BMP? *[25 Pa. Code §§ 102.8(g)(2) & 102.8(g)(4)]*

35. PCSM Standard Worksheets for water quality compliance (Worksheets 10, 11 – 13 or 12 – 13) have not been provided. *[25 Pa. Code §§ 102.8(g)(2) & 102.8(g)(4)]*
36. No identification of naturally occurring geologic formations or soil conditions that may have the potential to cause pollution after earth disturbance activities are completed and PCSM BMPs are operational and development of a management plan to avoid or minimize potential pollution and its impacts could not be located. *[25 Pa. Code § 102.8(f)(12)]*
37. It could not be determined if 20% of the existing impervious area on the project site and within the limit of disturbance was considered meadow in good condition. *[Act 167 Model Ordinance Section 602.E.4 and 25 Pa. Code §§ 102.8(g)(2) & 102.8(g)(3)]*
38. The receiving surface waters and their Chapter 93 classification are not identified on the PCSM Plan. *[25 Pa. Code § 102.8(f)(5)]*
39. The Legend provide for the PCSM Plan does not match the line types utilized in the plan view. *[25 Pa. Code § 102.8(f)(9)]*
40. A 1.75:1 fill slope is identified to the east of the Gestation Barn; however, this slope appears to be a cut condition. An analysis of the slope's stability could not be located in the PCSM Report. *[25 Pa. Code §§ 102.8(f)(9) & 102.8(f)(15)]*
41. The NPDES Permit Boundary and the full limit of earth disturbance have not been shown on the PCSM Plan. *[25 Pa. Code § 102.8(f)(3)]*
42. The note "Construction Staging Area as Req'd" on PCSM Plan Sheet C7 is not final for construction information, as the area is not defined and the note is too vague. *[25 Pa. Code § 102.8(d)]*
43. Construction Note 3 on PCSM Plan Sheet 7 is not consistent with the recommendations in the Erosion and Sediment Pollution Control Program Manual (E&S Manual), which recommends erosion control blanketing for slopes 3H:1V or steeper (Page 273). No discussion could be located which identifies how the proposed application would be as protective as the recommendations in the E&S Manual. *[25 Pa. Code §§ 102.8(f)(9), 102.11(a)(1) & 102.11(b)]*
44. The following are technical deficiencies associated with the Bio-Retention Basin Detail on PCSM Plan Sheet C8: *[25 Pa. Code § 102.8(f)(6)]*
 - a. Based upon the narrative discussion in the PCSM Report (Page 9) and the routing calculations (Pages 183 & 185, etc.), the 12 inch diameter orifice is incorrectly shown to be on the outside of the inlet box. The narrative discussion and the routing calculations identify that the 12 inch orifice should be inside the inlet box blocking/reducing the 15 inch diameter outlet pipe.
 - b. Provide dimensions E & F on the detail (this is also applicable for the Rain Garden Detail).

- c. How will the outlet structure be able to be constructed? Using the inlet top depth of 12-inches (from the PennDOT standard details) (anything less would require the top unit to be field modified or specialty order), the 6 inch diameter orifice would have to be constructed through the inlet top unit, not the inlet box.
 - d. The outlet pipe is proposed to be HDPE, which requires stone bedding completely around the pipe. The stone bedding will create a conduit for seepage through the embankment. This increased risk of failure of the embankment has not been addressed in the design.
45. The Sediment Basin Emergency Spillway w/ TRM Lining detail on PCSM Plan Sheet C9 is not appropriate for the PCSM Plan, as the E&S details shall not be located on the PCSM Plan. Revise the name of the detail such that it is appropriate for the PCSM design. Verify the crest elevations identified in this detail, as they do not match the other details for PCSM BMPs BB2, RG1, RG2 & RG3. *[25 Pa. Code § 102.8(f)(6)]*
46. The required buffers appear to not have been implemented in accordance with Act 167 Model Ordinance Section 501, as the contours appear to show streams adjacent to the earth disturbance activity. *[25 Pa. Code § 102.8(g)(2)]*
47. Ensure that any revisions to the PCSM Plan remain consistent with the Erosion and Sediment Control (E&S) Plan. If necessary, submit the revised E&S Plan to the Fulton County Conservation District for review. *[25 Pa. Code §§ 102.4(b)(5)(xiv) & 102.8(c)]*